

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

October 17, 2013 – Study Session  
Agenda Item No. 2

**SUBJECT:** Wireless Telecommunications Facilities Ordinance Update (PA2012-057)  
• Code Amendment No. CA2012-004

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**PROJECT SUMMARY**

An amendment to the Newport Beach Municipal Code (“NBMC”) to update regulations regarding wireless telecommunication facilities (“Telecom Facilities”). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

**RECOMMENDED ACTION**

Provide direction to staff.

**DISCUSSION**

The Planning Commission conducted a study session on September 19, 2013. During the meeting, the Commission discussed the draft ordinance in detail while receiving input from several wireless telecommunications industry representatives. Based on the dialog, staff has identified the following issues for further discussion and direction.

**1. Telecom Facilities in Residential Areas - §20.49.050(B)**

The wireless telecommunications industry has requested the possibility to locate facilities in residential areas (R-1 and R-2 zones) where they are presently prohibited. At the request of the Commission, staff has examined the issue and recommends no change to the current prohibition.

Many cities prohibit wireless telecommunications facilities in residential zones. Some permit them subject to specific development standards (e.g., setbacks, height, etc.) and discretionary review consisting of a conditional use permit or minor conditional use permit. For example, Irvine allows wireless telecommunications facilities in residential zones provided that minimum setbacks are met and facilities are separated from each other. Setbacks from residential uses are measured from the facility to property lines and they range between 50 to 300 feet depending upon the classification of the facility: more visible facilities are setback farther and setbacks do not apply to facilities in the public right-of-way. In Newport Beach, opportunities to locate telecommunication facilities within low density residential areas is presently provided within the public right-of-way, nearby non-residential or

multi-family property, or in association controlled open space parcels (i.e., clubhouses or landscape parcels).

*Question: Should the City consider allowing broader access to residential areas?*

*Recommendation: Maintain regulation limiting location in R-1 and R-2 zones.*

## **2. Collocation - §20.49.050(D)**

The City's ordinance in effect since 2002, requires new facilities to attempt to collocate with existing facilities when proposed within 1,000 feet of an existing facility. Additionally, facilities permitted pursuant to the ordinance must also accept a future collocated facility. Wireless industry representatives have requested elimination of the current collocation requirements as they struggle to comply and often it is infeasible to collocate. Barriers include prior facility operator or property owner resistance, regulatory limitations, physical constraints, and clearance requirements.

Current collocation requirements were a product of the times when freestanding structures were commonplace coupled with a desire to minimize the number of installations. Compliance with the collocation requirements necessitates significant effort by applicants and staff to investigate collocation possibilities and potentially determine whether or not it is feasible. Antennas are often much smaller today and can be hidden behind architectural screens or can be installed on streetlights. As antennas have become smaller and screened, collocation becomes increasingly difficult to implement or irrelevant. Today, State and federal law encourage collocation by mandating ministerial review and the elimination of the ability to deny a request for collocation. For these reasons, staff recommends eliminating the collocation requirement entirely.

*Question: Should the City eliminate current collocation requirements?*

*Recommendation: Eliminate collocation requirement.*

## **3. Public View Protection - §20.49.060(B)**

The proposed draft update requires an evaluation of the potential impact to public views from General Plan identified public vantage points. The Commission expressed a desire to expand the standard to include other public views. This potential change is in keeping with the Natural Resources Goal NR20 to preserve significant visual resources and the overall goal of the telecom ordinance to minimize visual impacts of telecommunications facilities. Staff will modify the language to include other public views. In practice, a potential applicant will need to consult with staff prior to filing an application where staff can provide guidance in identifying important public views for consideration when they are not identified by the General Plan.

*Question: Confirm additional provisions needed to address public views.*

*Recommendation: Include additional provisions.*

#### **4. Height - §20.49.060(C)**

The current ordinance allows Telecom Facilities at the upper height limit of the zoning district, with an additional 15 feet with City Council approval. There is no ability to go higher. The current draft ordinance would have allowed facilities to be 5 feet above the base height limit with taller facilities requiring a Variance. Staff believes further change is warranted and recommends the upper height limit with requests to exceed this limit falling into two categories; 1) facilities up to 15 feet higher than the upper limit being subject to a Conditional Use Permit (“CUP”), and 2) facilities higher than 15 feet above the upper height limit would require a Variance.

*Question: Should the City maintain existing height limits and introduce the Variance process for proposed facilities taller than 15 above the upper height limit?*

*Recommendation: 1) CUP for facilities up to 15 feet above the upper height limit of a zoning district, and 2) Variance for facilities taller than 15 feet above the height limit.*

The proposed draft update also introduces a new regulation that would require facilities to be installed at the minimum height to achieve an “average” coverage. A higher than average standard is likely desired by the community and based on the subjectivity of determining what a particular standard of coverage might be leads staff to recommend eliminating this concept. Objective height limits are established by the various zoning districts. Screening would be required by the ordinance and/or the review authority through the Zoning Clearance, Minor Use Permit (“MUP”), or CUP process.

*Question: Should height be evaluated on the standard of coverage being provided?*

*Recommendation: Eliminate this provision.*

#### **5. Emergency Communications Review - §20.49.070(G)**

Industry representatives indicated that the Orange County Fire Authority does not review new installations for interference and that there is no need to require the review. Many systems do not have a significant potential to interfere with emergency communications due to adequate separation of frequencies; however, some systems operate on frequencies close to emergency communications equipment and their potential location can be a factor. Staff contacted representatives from both Newport Beach Police and Fire Departments and they do not recommend eliminating public safety review of new or altered facilities.

*Question: Should review by the Newport Beach Police and Fire Departments be required?*

*Recommendation: Review should be required.*

#### **6. Modification of Existing Facilities - §20.49.100**

Staff proposes a five percent threshold of change of existing facilities where the Zoning Clearance (non-discretionary) process would be used. Requests to modify an existing facility greater than five percent would require the same review process as a new facility (i.e., Zoning

Clearance, MUP or CUP depending on the classification of the facility). Wireless telecommunications industry representatives have requested the City use previously issued Federal Communications Commission (“FCC”) guidelines that (in part) suggest a ten percent standard for an increase in height. Staff is concerned that a ten percent standard could result in an excessive increase and detrimental to an area or public view.

*Question: Should the threshold for requiring discretionary review to modify an existing facility be five percent or ten percent?*

*Recommendation: Establish threshold at five percent.*

## **7. Radio Frequency (“RF”) Compliance Report - §20.49.110**

The telecommunication industry recommends the City no longer require submittal of RF Compliance Reports. Many communities do not require an RF Compliance Report and rely upon the FCC to “police” licensed facilities. Staff understands that the FCC does not specifically require an independent compliance report unless there is evidence of non-compliance. Out of caution, staff does not recommend eliminating the RF Compliance Report for new or altered facilities.

*Question: Should RF Compliance Reports be required?*

*Recommendation: Yes, RF Compliance Reports shall be required.*

## **Pending FCC Rulemaking**

On September 26, 2013, the FCC issued a Notice of Proposed Rulemaking that is expected to clarify how federal law applies to the City’s ability to regulate wireless telecommunications facilities. Based upon what is known about the proposed draft rules, staff is concerned that the City’s ability to appropriately regulate facilities to avoid visual impacts may be jeopardized. The rulemaking process has just begun and the FCC is requesting feedback before actually publishing proposed rules. Staff will monitor FCC progress report as necessary.

## **Next Steps**

Based upon Commission direction and public feedback, staff will prepare a final revised draft ordinance that will be published in advance of a future public hearing to allow for review and comment.

Prepared by:

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